

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appellan(s): FRANKHUISEN Confirmation No. 9171
Application No.: 10/552,880
Filed: October 12, 2006
Group Art Unit: 1794
Examiner: WOOD, Ellen S.
Attorney Docket No.: 784-107 (177490)
Customer No.: 30448
For: LABEL FOR WET APPLICATIONS

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Commissioner for Patents
P.O. Box 1450
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REPLY BRIEF UNDER 37 C.F.R. § 41.41

Sir:

This Reply Brief is responsive to the Examiner's Answer mailed March 29, 2011, filed in the appeal of the final rejection of claims 1-24 dated March 3, 2010. Although no fee is believed to be due, the Commissioner is hereby authorized to charge any underpayment to Deposit Account No. 50-0951.

I. STATUS OF CLAIMS

Claims 1-24 were pending in this application. Claim 24 is rejected under 35 U.S.C. §112, second paragraph. Claims 1-24 stand rejected, with claims 1-11 and 15-24 rejected under 35 U.S.C. §102(b) as being anticipated, whereas claims 12-14 stand finally rejected under 35 U.S.C. §103(a) as being obvious. Claims 1-23 are being appealed, and an amendment is filed herewith to cancel claim 24.

II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The following grounds of rejection are requested to be reviewed on appeal.

(1) The Examiner's rejection of independent claims 1 and 16, and dependent claims 2, 4-11, 15 and 17-24 under 35 U.S.C. §102(b) as being anticipated by PCT Publication No. WO91/16025 to Samonides (hereafter "*Samonides*").

(2) The Examiner's rejection of independent claim 1, and dependent claims 2-6, 10, 15 and 23, under 35 U.S.C. §102(b) as being anticipated by Japanese Patent No. 10-180970 to Akio (hereafter "*Akio*").

(3) The Examiner's rejection of claims 12-14 under 35 U.S.C. §103(a) as being obvious over *Samonides*.

III. ARGUMENTS

Indefiniteness of claim 24 under 35 U.S.C. §112

Appellant has no comment on the correctness of the Examiner's rejection of claim 24 under 35 U.S.C. §112, second paragraph. Nevertheless, in the interests of reducing the issues on Appeal, Appellant files an Amendment to the claims herewith in accordance with 37 CFR §41.33(b)(1) to cancel claim 24. Entry of the amendment is respectfully requested.

Anticipation and obviousness over *Samonides* or *Akio* under 35 U.S.C. §§102 and 103

The "Response to Arguments" section of the Examiner's Answer mailed March 29, 2011 (hereinafter "Answer") states in relation to the rejection over *Samonides* that the claim language must be given its broadest possible meaning and that it should be interpreted as being a "slip of a laminate construction that is formed for attachment to something". The Answer further states that the claims are not directed to a label that has been adhered to a substrate, and that the label claimed by the applicant is merely a slip of a laminate construction that is formed for attachment to something. Yet further, the Answer states that the carrier sheet of *Samonides* is an outer layer that is used for receiving printed indicia, and that it is exposed when the printed indicia is printed thereon. Thus, the Answer asserts that the carrier sheet of *Samonides* meets the limitations of the outer layer of the claims.

Appellant respectfully disagrees with the Answer on all of these points. First, one of ordinary skill in the art reading the application and prosecution history would understand that the

term "label" as used in the claims does not include a backing or carrier sheet. A carrier sheet is not designed to receive printed indicia on an exposed surface thereof. A carrier sheet is not part of a label that is "formed for attachment to something" but rather is discarded, serving the purpose of protecting an adhesive layer on the label prior to attachment of the label to the item it is to label.

In relation to the rejection over *Akio*, the Answer asserts that a piece of paper can be considered to be a "label" and that the label of applicant's claimed invention does not claim adhesive properties within the actual laminate structure of the label. This does not address Appellant's comments that *Akio* teaches that the outer layer is transparent, and that it does not have an opacity that "reduces after the outer layer is exposed to moisture or liquid" as required by the present claims, because it is transparent.

The Answer has not provided any further evidence that either *Samonides* or *Akio* properly anticipate or render obvious the claims under appeal. The Answer does not show proof that *Samonides* or *Akio* teach a label of laminate construction in which the outer layer and under layer have opacities that react to moisture in different ways from one another, with the opacity of the over layer reducing after exposure to moisture or liquid, and the opacity of the under layer not reacting in the same manner.

CONCLUSION

For at least the reasons given above, claims 1-23 define patentable subject matter and are thus allowable. Appellant notes that the corresponding European patent application has been allowed. Appellant requests withdrawal of the rejections and allowance of the claims.

Respectfully submitted,

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